

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas P. Miller, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669
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DATE: September 3, 2002

SUBJECT: Clarifying Revisions to Optional Forms: *Case Questionnaire* and
Request for Statement of Witnesses and Evidence (revise forms
982(a)(21) and 982(a)(22)) (Action Required)

Issue Statement

Persons representing themselves in unlimited civil cases are not adequately informed by looking at the forms *Case Questionnaire* and *Request for Statement of Witnesses and Evidence* that those forms are designed for optional use under economic litigation in limited civil cases only.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003:

1. Revise form 982(a)(21), *Case Questionnaire*, (adding the words “—*For Limited Civil Cases (Under \$25,000)*”) in the title and footer to clarify that the form should be used in limited civil cases only and to indicate that if a case questionnaire is used, only this form may be used; and
2. Revise form 982(a)(22), *Request for Statement of Witnesses and Evidence*, (adding the words “—*For Limited Civil Cases (Under \$25,000)*”) to clarify in the title and footer that the form should be used in limited civil cases only.

The revised forms are attached at pages 4–8.

Rationale for Recommendation

Code of Civil Procedure section 91 states that “the provisions of this article [Article 2—Economic Litigation for Limited Civil Cases] apply to every limited civil case.” Section 93 gives the plaintiff the option of serving a case questionnaire. The council adopted form 982(a)(21) to implement section 93. The form’s instructions include the statement “The purpose of the case questionnaire is to help the parties settle their differences without spending a lot of money.” However, nowhere does the form indicate that it should be used in limited civil cases only.

Staff received a call from a self-represented plaintiff who had used the *Case Questionnaire* form in an unlimited civil case believing that it was the appropriate form to advance his case. He stated that opposing counsel had thanked him for providing so much information about his case, and had refused to complete and return the defendant’s *Case Questionnaire* form because it was not required for unlimited civil cases.

Plaintiff had found the form on the California Courts Web site and had not realized that the form is to be used under economic litigation for limited civil cases only. The only clue on the form is a reference to Code of Civil Procedure section 93 in tiny letters at the lower right corner.

The *Request for Statement of Witnesses and Evidence* (form 982(a)(22)) has a similar lack of clarity as to the restricted use of this form in limited civil cases. Although the form references Code of Civil Procedure section 96, it also does not indicate that it is optional and should be used under economic litigation in limited civil cases only. There is no comparable procedure for unlimited civil cases in the general discovery sections of the Code of Civil Procedure, such as sections 2031 (inspection of documents, etc.) and 2034 (exchange of information concerning expert witnesses).¹

If the titles and text of forms 982(a)(21) and 982(a)(22) are revised to clarify that these forms are for optional use in limited civil cases (under \$25,000), self-represented parties will be guided in the proper use of the forms. The term “economic litigation” was omitted from the title of the forms because limited civil cases are automatically subject to the economic litigation provisions of the code.

¹ Staff reviewed the *Form Interrogatories—Economic Litigation* (form FI-129), just revised effective January 1, 2002, and determined that it does not need to be revised. The instructions state: “These interrogatories are designed for optional use by parties under economic litigation in limited civil cases.” They go on to note: “However, these interrogatories also may be used in unlimited civil cases.” Therefore, the form interrogatories do not need to be revised.

Alternative Actions Considered

Although the forms could have been left unchanged, some self-represented parties might continue to be misled, believing the forms can be used in unlimited civil cases.

Comments From Interested Parties

Of the eight commentators who submitted comments, five (one judge and four court staff members) agreed with the forms that circulated.

Three commentators (two local bar representatives and one court staff member) agreed with the forms if they were amended. The staff member pointed out an inconsistency between the instructions on *Case Questionnaire*, which implied that the form was optional, and the footer (“Form Adopted for Mandatory Use”). In response, the committee clarified under “Instructions,” item A, that the case questionnaire is optional, but that only this form may be used if the option is exercised. In response to another comment, the committee agreed to make both forms consistent by adding “For Limited Civil Cases (Under \$25,000)” in the headers and footers on both forms.

The committee disagreed with a third commentator who perceived that the *Case Questionnaire* form, as written, was more suitable for service upon a plaintiff than a defendant. The form accurately follows the mandate of Code of Civil Procedure section 93 as to the information that should be elicited through the form. The commentator may not have understood that the plaintiff must complete the form before it is served on the defendant, with service of a blank version of the form for the defendant to complete and serve. If the defendant were also a cross-complainant, the same questions would be relevant to the defendant. In any event, the instructions make clear the responsibility of each party to complete the form.

The same commentator suggested that the *Case Questionnaire* form should be further modified so that it may be used at the option of either a plaintiff or a defendant. Code of Civil Procedure section 93(a) and (b) refers only to plaintiff having the option of serving the form.

A chart summarizing the comments and the committee’s responses is attached at pages 9–10.

Implementation Requirements and Costs

Courts may incur some costs in copying the revised forms and making them available to the public.

Attachments

**DO NOT FILE WITH THE COURT
THIS IS NOT AN ANSWER OR RESPONSE TO THE COMPLAINT**

982(a)(21)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PLAINTIFF (Name): — DEFENDANT (Name):	CASE NUMBER:
CASE QUESTIONNAIRE—FOR LIMITED CIVIL CASES (UNDER \$25,000)	

REQUESTING PARTY (Name):

RESPONDING PARTY (Name):

DRAFT-11

—INSTRUCTIONS—

- A. The purpose of the case questionnaire is to help the parties settle their differences without spending a lot of money. This is accomplished by exchanging information about the case early in the lawsuit. The exchange of case questionnaires may be started only by a plaintiff (or cross-complainant) in a limited civil case. The case questionnaire is optional, and if plaintiff exercises the option, only this form may be used.
- B. **Instructions for plaintiffs (and cross-complainants)**
1. Under Code of Civil Procedure section 93, a plaintiff (or cross-complainant) *may* serve a *completed* case questionnaire and a blank questionnaire *with a complaint (or cross-complaint)*.
 2. This is the only way you can require defendants (or cross-defendants) to serve you with a completed case questionnaire.
- C. **Instructions for defendants (and cross-defendants)**
1. If you have been served with a completed case questionnaire by a plaintiff (or cross-complainant), then you *must* fill in the blank case questionnaire. Your completed case questionnaire must be served on that same plaintiff (or cross-complainant) *with your answer to the complaint (or cross-complaint)*.
 2. **THIS IS NOT AN ANSWER OR RESPONSE TO THE COMPLAINT.**
- D. **Instructions for all parties**
1. **ALL QUESTIONS REFER TO THE INCIDENT OR AGREEMENT IN THIS LAWSUIT ONLY.**
 2. Answer each question. If a question is not applicable, answer "NA."
 3. Your answers are not limited to your personal knowledge, but you are required to furnish information available to you or to anyone acting on your behalf, whether you are a plaintiff, defendant, cross-complainant, or cross-defendant.
 4. Type or *legibly* print your answer below each question. If you cannot completely answer a question in the space provided on the case questionnaire, check the "attachment" box and put the number of the question and the complete answer on an attached sheet of paper or form MC-025. You should *not* put part of an answer on the case questionnaire and part on the attachment. You may put more than one answer on each attached page.
 5. When you have completed the case questionnaire, sign the verification and serve the original.
 6. You may compel compliance with these requirements under Code of Civil Procedure section 93.
 7. **DO NOT FILE THIS CASE QUESTIONNAIRE WITH THE COURT.**

DO NOT FILE WITH THE COURT

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

—QUESTIONS—

1. FOR ALL CASES

a. State your name and street address.

b. State your current business name and street address, the type of business entity, and your title.

c. Describe in detail your claims or defenses and the facts on which they are based, giving relevant dates.

☐ See attachment for answer number 1c.

d. State the name, street address, and telephone number of each person who has knowledge of facts relating to this lawsuit, and specify his or her area of knowledge.

☐ See attachment for answer number 1d.

e. Describe each document or photograph that relates to the issues or facts. You are encouraged to attach a copy of each. For each that you have described but not attached, state the name, street address, and telephone number of each person who has it.

☐ See attachment for answer number 1e.

DO NOT FILE WITH THE COURT

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

1. f. Describe each item of physical evidence that relates to the issues and facts; give its location; and state the name, street address, and telephone number of each person who has it.

☐ See attachment for answer number 1f.

- g. State the name and street address of each insurance company and the number of each policy that may cover you in whole or part for the damages claimed.

☐ See attachment for answer number 1g.

2. FOR PERSONAL INJURY OR PROPERTY DAMAGE CASES

- a. Describe each injury or illness that you received and your present complaints about each.

☐ See attachment for answer number 2a.

- b. State the name, street address, and telephone number of each physician, dentist, or other health care provider who treated or examined you; the type of treatment; the dates of treatment; and the charges by each to date.

☐ See attachment for answer number 2b.

- c. Itemize the medical expenses you anticipate in the future.

☐ See attachment for answer number 2c.

- d. Itemize your loss of income to date, give the name and street address of each source, and show how the loss is computed.

☐ See attachment for answer number 2d.

DO NOT FILE WITH THE COURT

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

2. e. Itemize the loss of income you anticipate in the future, give the name and street address of each source, and show how the loss is computed.

☐ See attachment for answer number 2e.

- f. Itemize your property damage, and state the amount or attach an itemized bill or estimate.

☐ See attachment for answer number 2f.

- g. Describe each other item of damage or cost that you claim, and state the amount.

☐ See attachment for answer number 2g.

3. FOR CASES BASED ON AGREEMENTS

- a. In addition to your answer to 1e, state all the terms and give the date of any part of the agreement that is not in writing.

☐ See attachment for answer number 3a.

- b. Describe each item of damage or cost you claim, state the amount, and show how it is computed.

☐ See attachment for answer number 3b.

VERIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____		_____
(TYPE OR PRINT NAME)		(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>):	
TELEPHONE NO.: E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	<div style="font-size: 2em; font-weight: bold;">DRAFT-9</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
REQUEST FOR STATEMENT OF WITNESSES AND EVIDENCE— FOR LIMITED CIVIL CASES (UNDER \$25,000) Requesting Party (<i>name</i>): Responding Party (<i>name</i>):	CASE NUMBER:

Under Code of Civil Procedure section 96, you are requested to serve on the undersigned, within 20 days, a statement of:

1. The names and street addresses of witnesses you intend to call at trial (except for any individual who is a party to this action).
2. A description of each document that you intend to offer at trial.
Attach a copy of each document available to you.
3. A description of each photograph and other physical evidence you intend to offer at trial.

Witnesses and evidence that will be used only for impeachment need not be included.

You Will Not Be Permitted To Call Any Witness Or Introduce Any Evidence Not Included In Your Statement in Response To This Request, Except As Otherwise Provided By Law.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Comments for SPR02-20
Economic Litigation: Clarifying Revisions to Optional Forms:
Case Questionnaire and Request for Statement of Witnesses and Evidence

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Julie Camacho Court Program Supervisor Superior Court of Ventura County	AM	N	. . . agree with proposed changes only if modified. <i>Case Questionnaire (form 982(a)(21))</i> : There appears to be an inconsistency in that the instructions on page one of the form indicate that it is an optional form but in the lower left corner of the form it indicates the form is adopted for “mandatory” use.	The committee agreed to clarify that serving a case questionnaire on the defendant is optional with the plaintiff, but once the option is exercised, the plaintiff may serve only the Judicial Council form <i>Case Questionnaire</i> (form 982(a)(21)).
2.	Ms. Lori Meseke Judicial Council Liaison Chair San Joaquin County Bar Association	AM	N	. . . agree with proposed changes only if modified. <i>Request for Statement of Witnesses and Evidence (form 982(a)(22))</i> : It would be helpful if form 982(a)(22) had added “For Limited Cases” in bold on bottom of form.	The committee agreed to add “for limited civil cases” to the title and footer of the form. It also added “(under \$25,000).” Both forms 982(a)(21) and 982(a)(22) now have consistent titles and footers.
3.	Mr. Richard W. Millar President Orange County Bar Association	AM	Y	<i>Case Questionnaire (form 982(a)(21))</i> : It is appropriate to modify the form in order to make it clear that the form is to be used in limited civil cases. However, the form should be further modified so that it may be used by both a plaintiff and a defendant, just as the <i>Request for Statement of Witnesses and Evidence</i> (form 982(a)(22)) is available for use by both a plaintiff and a defendant. The <i>Case Questionnaire</i> could be served upon a plaintiff concurrent with the service of the defendant’s responsive pleadings, just as it may now be served by a plaintiff concurrent with the service of the plaintiff’s complaint. As it presently reads, the form is more suitable for service upon a plaintiff than it is upon a defendant. Paragraphs 2 and 3 ask questions regarding the claim for damages. Damages are normally claimed by a	The committee will research the history of Code of Civil Procedure section 93 to determine policy reasons for allowing only a plaintiff in a limited civil case to initiate discovery by serving the case questionnaire. The committee disagrees that the form is more suitable for service upon a plaintiff than a defendant. The plaintiff must serve a completed form on the defendant and is, therefore, answering questions 2 and 3. A

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Comments for SPR02-20
Economic Litigation: Clarifying Revisions to Optional Forms:
Case Questionnaire and Request for Statement of Witnesses and Evidence

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				plaintiff. It is the defendant who normally is seeking information regarding the claimed damages. If the form is to be restricted for use by plaintiffs, then questions number 2 and 3 should be deleted from the form.	blank version of the same form is served on the defendant for completion. If defendant has cross-complained, the questions are relevant. The instructions make clear the responsibility of each party to complete the form.
4.	Ms. Lenor R. Noll Deputy Court Executive Officer Superior Court of Monterey County	A	N	. . . agree with proposed changes.	
5.	Hon. Harry R. Sheppard Presiding Judge Superior Court of Alameda County	A	N	. . . agree with proposed changes.	
6.	Ms. Lee Silva-Combs Deputy Executive Officer Superior Court of Monterey County	A	N	. . . agree with proposed changes.	
7.	Ms. Elena Simonian Court Administrator Superior Court of San Francisco County	A	N	. . . agree with proposed changes.	
8.	Mr. Joe Qniquez Supervising Legal Clerk I Superior Court of Stanislaus County	A	N	. . . agree with proposed changes.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.